

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. 1:22-cv-
)	
QUALEY EXCAVATION, INC.,)	
)	
Defendant.)	

COMPLAINT

The United States of America brings this action to enforce a civil penalty against Defendant Qualey Excavation, Inc. pursuant to 29 U.S.C. § 666(*l*). In support of its claims, the United States alleges as follows:

I. PARTIES

1. Plaintiff is the United States of America, on behalf of its agency, the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”).
2. Defendant is Qualey Excavation, Inc, of Holden, Maine.

II. JURISDICTION AND VENUE

3. Plaintiff brings this action to recover a civil penalty owed by Defendant following imposition of such penalty by OSHA for employee and public safety violations of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq.*, and the regulations promulgated thereunder.
4. Pursuant to 29 U.S.C. § 666(*l*), the civil penalty owed by Defendant may be recovered by this civil action in the name of the United States brought in the United States

district court for the district where the violations are alleged to have occurred or where the employer has its principal office.

5. This Court therefore has jurisdiction over this action pursuant 29 U.S.C. § 666(l) and 28 U.S.C. § 1345.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1395(a).

III. CIVIL PENALTY OWED BY DEFENDANT

7. On or about July 24, 2017, Defendant was engaged at a work site located in Millinocket, Maine.

8. A violation under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq.*, was found during inspection of the work site. Such violation was determined by OSHA to be “serious.”

9. On September 26, 2017, OSHA issued an administrative Citation and Notification of Penalty to Defendant for such serious violation of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq.* The Inspection Number assigned is 1250079.

10. The Citation and Notification of Penalty set forth Defendant’s right to contest the citation and penalties.

11. Defendant failed to contest the citation or the penalty. By operation of the law, if an administrative citation is not timely contested, the penalty becomes an OSHA final order. The time for Defendant to seek administrative or judicial review has expired. Because Defendant failed to contest the citation and penalty, the proposed penalty is final.

12. Because Defendant failed to contest the citation and penalty assessed by OSHA he is precluded from contesting the merits of the underlying violation. Accordingly, this

proceeding is in the nature of a civil collection action only, and the appropriateness of the underlying determination by OSHA to impose the penalty is not subject to review.

13. On December 14, 2017, OSHA issued a demand letter seeking payment of the citation amount. Defendant did not respond.

14. OSHA referred the debt to the Department of Treasury's Bureau of Fiscal Service for administrative debt collection as required by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.* The collection efforts of the Department of Treasury's Bureau of Fiscal Service have been unsuccessful.

15. As of this date, Defendant has failed to pay the civil penalty assessed on September 26, 2017, and therefore remains indebted to Plaintiff with respect to Inspection Number 1250079.

WHEREFORE, the United States of America requests that this Court enter judgment in its favor and against Defendant in the amount of \$6,551.42, comprising \$3,803.00 in principle, \$144.33 in interest, \$846.97 in penalties, and \$20.00 administrative fee, and \$1,737.12 in other fees.

Dated: May 17, 2022
Bangor, Maine

Respectfully submitted,

DARCIE N. MCELWEE
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